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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,777	09/19/2003	Christer Strom	P03,0290	6382

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SCHIFF HARDIN, LLP  
PATENT DEPARTMENT  
6600 SEARS TOWER  
CHICAGO, IL 60606-6473

EXAMINER
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RAGONESE, ANDREA M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/665,777

Applicant(s)

STROM, CHRISTER

Examiner

Andrea M. Ragonese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 1 and 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20040123.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.84(r) due to the use of improper reference character notation. Lead lines are required for each reference character including those which: (1) indicate the entire section towards which it points; (2) indicate the surface shown by the line looking along the direction of the arrow; or (3) to show the direction of movement. Such a lead line must use an arrow at the end of the line, provided that their meaning is clear. For example, elements **6A** and **6B** require lead lines. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The title of the invention has a typographical error. In order to correct this informality, the following title is suggested: Apparatus For Determination of Recrutable Volume of a Lung.
3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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4. The abstract of the disclosure is objected to because of the use of improper sentence structure. The abstract should only contain complete sentences, not run-on sentences, as it currently contains. Correction is required. See MPEP § 608.01(b).

***Claim Objections***

5. **Claims 1-2** are objected to because of the following informalities: in **claim 1**, line 1, "recruitable" should be deleted and – recruitable – inserted therefor; and in **claim 2**, line 7, "recruitable" should be deleted and – recruitable – inserted therefor. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **claim 1**, Applicant recites numerous times, "...adapted to..." This recitation is a statement of intended use, which is not given patentable weight in apparatus claims. Therefore, as broadly interpreted by the Examiner, the following rejection is applied based on the prior art of record, which is capable of being adapted to carry out the method as recited by Applicant.

8. **Claims 1-2** are rejected under 35 U.S.C. 102(b) as being anticipated by Leenhoven (US 6,390,092 B1) or Huygen et al. (US 6,116,241) or Stenzler (US 5,937,854). Leenhoven or Huygen et al. or Stenzler discloses a ventilator system that

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has a control system, a pneumatic unit and a measurement system and used in combination, these systems are capable of being adapted to, or programmed, to carry out the method in which the control system regulates the pneumatic unit in order to deliver breathing gas to the subject and the measurement system measure the breathing gas flow.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **703-306-4055**. The examiner can normally be reached on Monday through Thursday from 8 am until 4 pm ET.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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